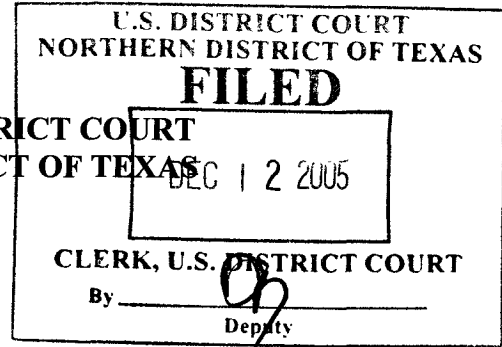


**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
CIVIL DIVISION**



Richard N. Abrams

**Plaintiff**

v.

United States of America

Department of the Treasury

Office of the Comptroller of the Currency

**Defendant**

Case No. **3 - 05 CV - 2433 N**

**COMPLAINT**

COMES NOW, Richard N. Abrams, Plaintiff in the above-styled matter, who through his undersigned Counsel, files this Complaint against Defendant, Office of the Comptroller of the Currency, pursuant to the Freedom of Information Act, and in support thereof alleges as follows:

**JURISDICTION**

1. Plaintiff, Richard N. Abrams, is a resident of Fort Worth, Texas.
2. Defendant, Office of the Comptroller of the Currency ("OCC") is a bureau of the United States Department of the Treasury and an agency of the United States.
3. Plaintiff files this action pursuant to the provisions of the Freedom of Information Act ("FOIA"), 5 U.S.C. §552, for an Order requiring Defendant to produce a copy of a certain agency record to Plaintiff that was requested previously by Plaintiff pursuant to that statute.
4. This Court has jurisdiction to review *de novo* and adjudicate the issues raised in this Complaint pursuant to the provisions of 5 U.S.C. §552(a)(4)(B).

**IDENTITY AND NATURE OF AGENCY RECORD REQUESTED**

5. On or about June 9, 2005, the OCC issued a formal Order of Investigation ("OCC Order") pursuant to section 10(c) of the Federal Deposit Insurance Act, 12 U.S.C. §1820(c). A copy of the OCC Order will be appended to this Complaint under seal as "Exhibit A" for the *in camera* review of this Court, as provided in 5 U.S.C. §552(a)(4)(B), upon entry of a Stipulated Protective Order.<sup>1</sup>

<sup>1</sup> Counsel for Plaintiff has agreed to the entry of such Protective Order in a related case. See footnote 7, *infra*.

6. Pursuant to the terms and conditions set forth in the OCC Order:

(a) The OCC issued a subpoena on or about July 7, 2005, requiring Plaintiff to produce copies of certain specified records and to provide sworn deposition testimony regarding such records and/or the events pertaining to such records. Copies of that subpoena and the accompanying transmittal letter are appended hereto as "Exhibit B-1," and all of the information contained in such documents is incorporated herein by reference thereto.<sup>2</sup>

(b) The OCC issued a subpoena on or about October 13, 2005, requiring Plaintiff to produce copies of certain specified records. Copies of that subpoena and the accompanying transmittal letter are appended hereto as "Exhibit B-2," and all of the information contained in such documents is incorporated herein by reference thereto.<sup>3</sup>

(c) The OCC issued a subpoena on or about October 13, 2005, requiring Tim Raso to produce copies of certain specified records and to provide sworn deposition testimony regarding such records and/or the events pertaining to such records. Copies of that subpoena and the accompanying transmittal letter are appended hereto as "Exhibit B-3," and all of the information contained in such documents is incorporated herein by reference thereto.<sup>4</sup>

(d) The OCC issued a subpoena on or about October 13, 2005, requiring Michael Lewis to produce copies of certain specified records and to provide sworn deposition testimony regarding such records and/or the events pertaining to such records. Copies of that subpoena and the accompanying transmittal letter are appended hereto as "Exhibit B-4," and all of the information contained in such documents is incorporated herein by reference thereto.<sup>5</sup>

(e) The OCC issued a subpoena on or about October 13, 2005, requiring Lisa Boyd West to produce copies of certain specified records and to provide sworn deposition testimony regarding such records and/or the events pertaining to such records. Copies of that subpoena and

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<sup>2</sup> All of the referenced factual information is in the public domain with the acquiescence of the OCC. In the course of issuing multiple subpoenas to various individuals under the authority of the OCC Order, the agency has never imposed any type of restriction upon the recipient of any subpoena that limits or prohibits such person from publicly disclosing any of the information contained in those subpoenas or the accompanying transmittal letters. As shown in the referenced exhibit, there is nothing in the transmittal letter or the subpoena itself that requests or prohibits the recipient from disclosing any of the information contained in either document to anyone else.

<sup>3</sup> *Ibid.*

<sup>4</sup> *Ibid.*

<sup>5</sup> *Ibid.*

the accompanying transmittal letter are appended hereto as “Exhibit B-5,” and all of the information contained in such documents is incorporated herein by reference thereto.<sup>6</sup>

(f) The OCC issued a subpoena on or about November 2, 2005, requiring John H. Mackey, President of Surety Bank, Fort Worth, Texas (“Bank”), to produce copies of certain specified Bank records pertaining to the personal financial affairs of Plaintiff.<sup>7</sup> Copies of that subpoena and the OCC letter request it superceded, as well as the notification letter addressed to Plaintiff required by the Right to Financial Privacy Act, 12 U.S.C. §§ 3401 *et seq.*, are appended hereto as “Exhibit B-6,” and all of the information contained in such documents is incorporated herein by reference thereto.<sup>8</sup>

7. (a) Plaintiff has reasonable cause to believe that the OCC has issued other subpoenas pursuant to the OCC Order, requiring the production of documentary materials and sworn deposition testimony of persons other than those named in the foregoing paragraphs.

(b) Based upon the nature and scope of the information sought by the OCC pursuant to the OCC Order, as reflected in Exhibits B-1 through B-6 appended to this Complaint, Plaintiff has reasonable cause to believe that the nature and scope of the information sought by the OCC from the other persons subpoenaed, as alleged in paragraph 8(a) above, is substantially the same as that sought by the OCC subpoenas contained in the referenced exhibits.

#### **PLAINTIFF’S REQUESTS FOR COPY OF AGENCY RECORD AND AGENCY RESPONSES**

8. In response to a written request by Plaintiff dated July 27, 2005 for a copy of the OCC Order, the OCC denied Plaintiff’s request on the grounds that the OCC Order is deemed confidential under applicable OCC regulations at 12 C.F.R. §§19.181 and 183(a).<sup>9</sup>

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<sup>6</sup> *Ibid.*

<sup>7</sup> This OCC subpoena superceded an OCC letter request dated October 31, 2005, wherein it appears the Bank had previously agreed with the OCC to produce the requested records voluntarily. Further, this subpoena is the subject of a **related case** (Docket No. 3:05-CV-2242-L) which is currently pending in this Court that pertains to an action Plaintiff filed on November 14, 2005 for an Order to Quash the OCC Subpoena for failure of the agency to comply with the requirements of the Right to Financial Privacy Act, 12 U.S.C. §§ 3401, *et seq.* On November 17, 2005, United States District Judge Sam A. Lindsay issued an Order referring the matter for hearing (if necessary) and disposition to United States Magistrate Judge Paul D. Stickney.

<sup>8</sup> *Cf.* footnote 2, *supra*.

<sup>9</sup> The first regulation is inapposite since, by its own terms, it applies to “information and documents obtained [by the OCC] in the course of a formal investigation.” Similarly, the second regulation is equally non-determinative since it is totally silent on the issue of whether a copy of the OCC Order can be produced upon request.

9. On August 2, 2005, Plaintiff filed a formal request for a copy of the OCC Order pursuant to the provisions of the Freedom of Information Act ("FOIA"), 5 U.S.C. §552.

10. By letter dated August 17, 2005, the OCC denied Plaintiff's request on the grounds the OCC Order is exempt from production under 5 U.S.C. §§552(b)(5), 552(b)(7), and 552(b)(8).

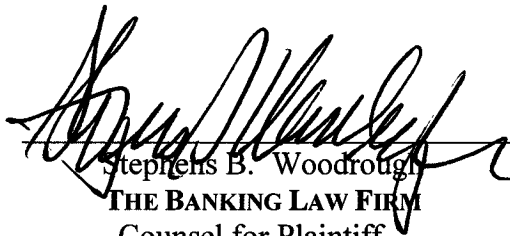
11. On August 25, 2005 Plaintiff formally appealed the OCC denial.

12. On November 18, 2005, the OCC denied Plaintiff's intra-agency appeal on the sole ground the OCC Order is exempt from production under 5 U.S.C. §552(b)(8).<sup>10</sup> A copy of the final agency action by the OCC denying Plaintiff's appeal is appended to this Complaint as "Exhibit C."

13. The final agency action denying Plaintiff's request for a copy of the OCC Order is not supported by the provisions of 5 U.S.C. §552(b)(8). The OCC Order has therefore been withheld from Plaintiff improperly and contrary to law.

WHEREFORE, Counsel for Plaintiff respectfully requests that this Court make a determination and ruling that the OCC Order is not exempt from disclosure to Plaintiff under the exemption provided in 5 U.S.C. §552(b)(8), and that it issue an order directing the OCC to produce a copy of the OCC Order to Plaintiff, and for such other and further relief as Plaintiff may be entitled to receive under applicable law.

Respectfully submitted on this the 8<sup>th</sup> day of December 2005.

  
Stephens B. Woodruff  
THE BANKING LAW FIRM  
Counsel for Plaintiff  
*Pro Hac Vice*<sup>11</sup>

100 Beach Drive Suite 1801-03  
St. Petersburg, Florida 33701  
Telephone: (727) 898-9009  
Facsimile: (727) 898-9006

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<sup>10</sup> Based upon that determination, the final agency action held that the FOIA exemptions in 5 U.S.C. §§552(b)(5) and 552(b)(7) are not applicable, as claimed by the OCC in its original denial of Plaintiff's request.

<sup>11</sup> Application was approved by United States District Judge Sam A. Lindsay in Order issued on November 21, 2005 in related case (Docket No. 3:50-CV-2242-L), which was referred for hearing (if necessary) and disposition to United States Magistrate Judge Paul D. Stickney on November 17, 2005. See footnote 6, *supra*, and accompanying text.

**CERTIFICATE OF SERVICE**

I certify that on December 8, 2005, I served a true and correct copy of the foregoing Complaint filed by Plaintiff against the OCC upon the following persons:

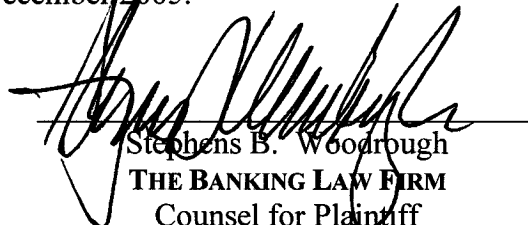
John C. Dugan  
Comptroller of the Currency  
Office of the Comptroller of the Currency  
Independence Square  
250 E Street, S.W.  
Washington, D.C. 20219  
Facsimile: (202) 874-4950

Julie L. Williams  
First Senior Deputy Comptroller and Chief Counsel  
Office of the Comptroller of the Currency  
Independence Square  
250 E Street, S.W.  
Washington, D.C. 20219  
Facsimile (202) 874-5374

Richard B. Roper  
United States Attorney  
Earle Cabell Federal Building  
1100 Commerce Street, Suite 300  
Dallas, Texas 75242-1699  
Facsimile (214) 767-2898

by sending such copy thereof by facsimile to the foregoing persons at the numbers stated above and by regular U.S. Mail to the addresses stated above with sufficient prepaid postage affixed thereto.

I certify further that I shipped the original and one copy of the foregoing Complaint by Next Day Air United Parcel Service to the Clerk of the U.S. District Court for the Northern District of Texas for filing at 1100 Commerce, Room 1452, Dallas, Texas 75242, accompanied by the required filing fee of \$250 on this 8<sup>th</sup> day of December 2005.

  
Stephens B. Woodrough  
**THE BANKING LAW FIRM**  
Counsel for Plaintiff  
*Pro Hac Vice*

100 Beach Drive Suite 1801-03  
St. Petersburg, Florida 33701  
Tel: (727) 898-9009  
Fax: (727) 898-9006

**EXHIBIT A**

## **WARNING**

This document is subject to a Stipulated Protective Order entered by the United States District Court for the Northern District of Texas, Docket No. 3:05-CV-2242-L, a copy of which is appended thereto.

**EXHIBIT B-1**



SUBPOENA DUCES TECUM

**UNITED STATES OF AMERICA**

**DEPARTMENT OF THE TREASURY  
OFFICE OF THE COMPTROLLER OF THE CURRENCY**

**In the Matter of Surety Bank, N.A., Ft. Worth, Texas**

To: Richard N. Abrams  
c/o Stephens B. Woodrough, Esq.  
100 Beach Drive N.E., Suite 1801-03  
St. Petersburg, Florida 33701-3965

The Office of the Comptroller of the Currency ("OCC") has issued a formal order authorizing this investigation pursuant to 12 U.S.C. §§ 481, 1818(n), and 1820(c).

**YOU MUST PRODUCE** everything specified in the Appendix to this subpoena *duces tecum* on or before 5 P.M., August 4, 2005, to:

Jose Rivas, Attorney  
Enforcement & Compliance Division  
Office of the Comptroller of the Currency  
250 E St., S.W., Washington, DC 20219

**YOU ARE SUMMONED TO TESTIFY** before Jose Rivas, Attorney or other OCC designated officials, at:

Office of the Comptroller of the Currency, Southern District Office  
500 North Akard Street, Suite 1600  
Dallas, Texas 75201

on the 11th day of August, 2005 at 10:00 a.m.

Willful failure to comply with this subpoena is a misdemeanor offense, punishable by a penalty of up to \$1,000 and imprisonment of up to one year.

In testimony whereof, the undersigned has hereunto  
set his hand, this 7th day of July, 2005.

  
Brian C. McCormally

Director

Enforcement and Compliance Division

**APPENDIX A**  
**TO SUBPOENA DUCES TECUM TO**  
**Richard N. Abrams**

**A. DEFINITIONS**

1. The terms “you” and “your” means Richard N. Abrams (or Dick Abrams), in the individual and/or corporate capacity, any wholly owned subsidiaries, affiliates, limited partnerships, joint ventures, and any employees, agents, accountants, attorneys, or other persons or entities acting under the control, the direction or on behalf of Richard N. Abrams (or Dick Abrams).
2. The terms “and” and “or” shall be construed conjunctively or disjunctively as necessary to make the request inclusive rather than exclusive.
3. The terms “relates” and “relating to” shall mean about, pertaining to, concerning, referring to, relating to, describing, reflecting, referencing, constituting and/or evidencing a stated subject matter.
4. The terms “document” and “documents” shall be used in their broadest sense and shall mean and include all written, printed, typed, recorded, or graphic matter of every kind and description, both originals and copies, and all attachments and appendices thereto. Without limiting the foregoing, the terms “document” and “documents” shall include all agreements, contracts, communications, correspondence, letters, telegrams, telexes, facsimiles, messages, memoranda, records, reports, books, summaries, or other records of telephone conversations of interviews, summaries, or other records of meetings and conferences, summaries or other records of negotiations, other summaries, diaries, diary entries, calendars, appointment books, time records, instructions, work assignments, visitor records, forecasts, statistical data, statistical statements, financial statements, work sheets, work papers, drafts, graphs, maps, charts, tables, accounts, analytical records, consultants’ reports, notices, marginal notations, notebooks, telephone bills or records, bills, statements, records, of obligation and expenditure, invoices, lists, journals, advertising, recommendations, files, printouts, compilations, tabulations, purchase orders, receipts, sell orders, confirmations, checks, canceled checks, letters of credit, envelopes or folders or similar containers, voucher analyses, studies, surveys, transcripts of hearings, transcripts of speeches, tape or disc recordings, sound recordings, video recordings, film, tapes, photographs, punch cards, programs, data compilations from which information can be obtained (including matter used in data processing), and other printed, written, handwritten, typewritten, recorded, stenographic, computer-generated, computer-stored, electronically stored matter, however and by whomever produced, prepared, reproduced, disseminated, or made.

5. The terms "document" or "documents" shall further include all copies of documents by whatever means made, except that where a document is identified or produced, identical copies thereof which do not contain any markings, additions, or deletions different from the original need not be separately produced. "Document" and "documents" means and includes all matter within the foregoing description that is in your possession, control or custody, or in the possession, control, or custody of your attorney or accountant. Without limiting the term "control," a document is deemed to be within your control if you have ownership, possession, or custody of the document, or the right to secure the document or copy thereof from any person or public or private entity having physical possession thereof.
6. The term "bank" means Surety Bank, N.A., Ft. Worth, Texas.

B. INSTRUCTIONS

1. All documents called for by this subpoena are to be produced in un-redacted form. If you make redactions based upon a claim of privilege, such redactions must be clearly marked.
2. If any of the documents requested herein are withheld under a claim of privilege, identify each such document and state the date of the document, identify its author and addressee, each person to whom copies of the document were furnished or to whom the contents thereof were communicated, a summary of the subject matter of the document, its present location and custodian, the basis upon which the asserted privilege is claimed and the numbered requests in Part C, below, to which the document is responsive.
3. If any of the documents requested herein have been destroyed, furnish a list identifying each such document, its author and addressee, each person to whom copies of the document were furnished or to whom the contents thereof were communicated, a summary of the substance of the document, the date upon which it was destroyed and the reasons it was destroyed.
4. If any of the documents requested herein is known by you to exist, but is not within your care, custody, control or possession, identify each such document, the whereabouts of such document, the person who is in current possession of such document, and describe what action, if any, you have taken to acquire such document.
5. Documents shall be produced as they are kept in the regular course of business or, in the alternative, shall be organized and labeled so as to correspond to the paragraph number of the document requests to which they relate.

**C. DOCUMENTS REQUESTED**

1. Any and all documents that demonstrate and/or evidences your ownership interest in Mortuary Financial Services, Inc., Lincoln Financial, and First National, LTD during the year 2004.
2. Any and all documents, including, but not limited to resolutions of the Board of Directors of the Bank, relating to the authorization of the waiver of fees, including wire transfer fees, on the following Bank accounts:
  - (a) Account # 200351, Richard Abrams
  - (b) Account # 1933, Mortuary Financial Services, Inc.
  - (c) Account # 4432, Mortuary Financial Services, Inc.
  - (d) Account # 2014, First National, LTD.
3. Any and all documents pre-authorizing the payment of overdraft fees on Account # 200351.
4. Any and all documents, including, but not limited to, handwritten or typed notes of any interviews or conversations, relating to an Interagency Notice of Change in Director or Senior Executive Officer for James Blair Barclay filed by the Bank on or about April 20, 2004.
5. Any and all documents relating to the purchase of several Certificates of Deposits totaling the approximate amount of \$600,000, on or about January 15, 2004, at one of the former San Antonio branches of the Bank.
6. Any and all documents, including, but not limited to, any depositions and affidavits, relating to arbitration proceedings between the Bank and TexStar National Bank.
7. Any and all documents relating to Oak Park Pharmacy, a real property foreclosed on by the Bank on July 21, 2004.
8. Any and all documents relating to the removal of any fixtures, equipment, and/or other property from Oak Park Pharmacy in 2004.

**D. SUPPLEMENTAL INFORMATION FOR INDIVIDUALS WHO HAVE BEEN DIRECTED TO SUPPLY INFORMATION PURSUANT TO A SUBPOENA**

**Authority to Solicit the Information:**

The authority for requiring production of information is set forth in the subpoena you received. Disclosure of the information to the agency is mandatory, subject to the valid assertion of any legal right or privilege you may have.

**Principal Uses of the Information:**

The OCC's principal purpose in soliciting the information is to gather facts to determine whether any individual or bank is engaging, has engaged, or is about to engage in violations of law or regulation or unsafe and unsound banking practices. If the agency determines that an individual or a bank is engaging, has engaged, or is about to engage in such conduct, the information may be used in an enforcement proceeding against either or both of them.

**Routine Uses of the Information:**

The routine uses which may be made of the information supplied may include one or more of the following:

1. Provide the Department of Justice with periodic reports that indicate the number, amount, individual identity, and other details concerning outstanding potential criminal violations of the law which have been referred to the Department;
2. Provide the Federal Financial Regulatory Agencies and FinCEN with information relevant to their operations;
3. Disclose information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation;
4. Provide information or records to any appropriate governmental agency or self-regulatory organization charged with the responsibility of administering law or investigating or prosecuting violations of law or charged with enforcing or implementing a statute, rule, regulation, order, policy, or license;
5. Disclose, when considered appropriate, information to a bar association or other trade or professional organization performing similar functions, for possible disciplinary action;
6. Disclose certain records, in the event of litigation or enforcement action, to the appropriate court, magistrate, or administrative tribunal; or to counsel or witnesses for the presentation of evidence in the course of discovery, to the extent permitted by law.

**Effect of Not Supplying the Information:**

If you fail to comply with the subpoena, the agency may seek a court order requiring you to do so. If such an order is obtained and you thereafter fail to supply the information, you may be subject to civil or criminal sanctions, or both, for contempt of court.

In addition, if you willfully fail or refuse to attend and testify or to answer any lawful inquiry or to produce documents or other records in compliance with the subpoena, you may be found guilty of a misdemeanor and fined not more than \$1,000 or imprisoned for a term of not more than one year, or both.



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Comptroller of the Currency  
Administrator of National Banks

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Washington, DC 20219

July 11, 2005

Stephens B. Woodrough, Esq.  
100 Beach Drive N.E., Suite 1801-03  
St. Petersburg, Florida 33701-3965

Subject: Richard N. Abrams,  
Surety Bank, N.A., Ft. Worth, Texas

Dear Mr. Woodrough:

Please find enclosed a *subpoena* addressed to your client. This subpoena is issued under authority of an Order of Investigation into the affairs of Surety Bank, N.A., Ft. Worth, Texas by the Office of the Comptroller of the Currency ("OCC"). This subpoena is issued under authority of 12 U.S.C. § 1818(n) and 12 C.F.R. § 19.34 by the OCC.

This subpoena requires your client to produce exact copies of the documents specified in the Appendix to the subpoena *duces tecum* by August 4, 2005, to my attention. Your client must provide a certification that the copies are a complete response to the request in the subpoena. In addition, if you or your client intend to seek reimbursement for copying costs, you must contact me prior to making any copies in order to make arrangements for copying that are consistent with the OCC's procurement and reimbursement policies.

In addition, this subpoena requires your client's testimony in a sworn statement at the OCC's Southern District Office, 500 North Akard Street, Dallas, Texas 75201 on August 11, 2005 at 10:00 a.m. Your client will be entitled to the same fees and mileage paid witnesses in the district courts of the United States. In connection with the deposition, your client is entitled to witness fees, mileage and certain expenses, including arranging any airfare or lodging for your client through the OCC's travel agency at the government rate. If your client intends to seek reimbursement for witness fees or other expenses, you must contact me at least one week prior to your client's sworn statement in order to make arrangements that are consistent with the OCC's procurement and reimbursement policies. Following your client's sworn statement, please have your client itemize his expenses, attach the applicable receipts, and send the itemization and receipts, along with his taxpayer identification number, to me at the address above.

If you have any questions regarding this subpoena, please contact me at (202) 874-5139.

Sincerely,



Jose Rivas  
Attorney  
Enforcement and Compliance Division

Enclosures

cc: Richard Abrams  
P.O. Box 1778  
Ft. Worth, Texas 76114  
(per request of Stephens B. Woodrough, Esq.)

bcc: Procurement File

**EXHIBIT B-2**



**SUBPOENA DUCES TECUM**

**UNITED STATES OF AMERICA**

**DEPARTMENT OF THE TREASURY  
OFFICE OF THE COMPTROLLER OF THE CURRENCY**

**In the Matter of Surety Bank, N.A., Ft. Worth, Texas**

To: Richard N. Abrams  
c/o Stephens B. Woodrough, Esq.  
100 Beach Drive N.E., Suite 1801-03  
St. Petersburg, Florida 33701-3965

The Office of the Comptroller of the Currency ("OCC") has issued a formal order authorizing this investigation pursuant to 12 U.S.C. §§ 481, 1818(n), and 1820(c).

**YOU MUST PRODUCE** everything specified in the Appendix to this subpoena *duces tecum* on or before October 31, 2005, to:

Jose Rivas, Attorney  
Enforcement & Compliance Division  
Office of the Comptroller of the Currency  
250 E St., S.W., Washington, DC 20219

Willful failure to comply with this subpoena is a misdemeanor offense, punishable by a penalty of up to \$1,000 and imprisonment of up to one year.

In testimony whereof, the undersigned has hereunto set his hand, this 13th day of October, 2005.

  
Linda Bridgman, Assistant Director

**APPENDIX A**  
**TO SUBPOENA DUCES TECUM TO**  
Richard N. Abrams

**A. DEFINITIONS**

1. The terms “you” and “your” means Richard N. Abrams (or Dick Abrams), in the individual and/or corporate capacity, any wholly owned subsidiaries, affiliates, limited partnerships, joint ventures, and any employees, agents, accountants, attorneys, or other persons or entities acting under the control, the direction or on behalf of Richard N. Abrams (or Dick Abrams).
2. The terms “and” and “or” shall be construed conjunctively or disjunctively as necessary to make the request inclusive rather than exclusive.
3. The terms “relates” and “relating to” shall mean about, pertaining to, concerning, referring to, relating to, describing, reflecting, referencing, constituting and/or evidencing a stated subject matter.
4. The terms “document” and “documents” shall be used in their broadest sense and shall mean and include all written, printed, typed, recorded, or graphic matter of every kind and description, both originals and copies, and all attachments and appendices thereto. Without limiting the foregoing, the terms “document” and “documents” shall include all agreements, contracts, communications, correspondence, letters, telegrams, telexes, facsimiles, messages, memoranda, records, reports, books, summaries, or other records of telephone conversations of interviews, summaries, or other records of meetings and conferences, summaries or other records of negotiations, other summaries, diaries, diary entries, calendars, appointment books, time records, instructions, work assignments, visitor records, forecasts, statistical data, statistical statements, financial statements, work sheets, work papers, drafts, graphs, maps, charts, tables, accounts, analytical records, consultants’ reports, notices, marginal notations, notebooks, telephone bills or records, bills, statements, records, of obligation and expenditure, invoices, lists, journals, advertising, recommendations, files, printouts, compilations, tabulations, purchase orders, receipts, sell orders, confirmations, checks, canceled checks, letters of credit, envelopes or folders or similar containers, voucher analyses, studies, surveys, transcripts of hearings, transcripts of speeches, tape or disc recordings, sound recordings, video recordings, film, tapes, photographs, punch cards, programs, data compilations from which information can be obtained (including matter used in data processing), and other printed, written, handwritten, typewritten, recorded, stenographic, computer-generated, computer-stored, electronically stored matter, however and by whomever produced, prepared, reproduced, disseminated, or made.

5. The terms “document” or “documents” shall further include all copies of documents by whatever means made, except that where a document is identified or produced, identical copies thereof which do not contain any markings, additions, or deletions different from the original need not be separately produced. “Document” and “documents” means and includes all matter within the foregoing description that is in your possession, control or custody, or in the possession, control, or custody of your attorney or accountant. Without limiting the term “control,” a document is deemed to be within your control if you have ownership, possession, or custody of the document, or the right to secure the document or copy thereof from any person or public or private entity having physical possession thereof.
6. The term “bank” means Surety Bank, N.A., Ft. Worth, Texas.

B. INSTRUCTIONS

1. All documents called for by this subpoena are to be produced in un-redacted form. If you make redactions based upon a claim of privilege, such redactions must be clearly marked.
2. If any of the documents requested herein are withheld under a claim of privilege, identify each such document and state the date of the document, identify its author and addressee, each person to whom copies of the document were furnished or to whom the contents thereof were communicated, a summary of the subject matter of the document, its present location and custodian, the basis upon which the asserted privilege is claimed and the numbered requests in Part C, below, to which the document is responsive.
3. If any of the documents requested herein have been destroyed, furnish a list identifying each such document, its author and addressee, each person to whom copies of the document were furnished or to whom the contents thereof were communicated, a summary of the substance of the document, the date upon which it was destroyed and the reasons it was destroyed.
4. If any of the documents requested herein is known by you to exist, but is not within your care, custody, control or possession, identify each such document, the whereabouts of such document, the person who is in current possession of such document, and describe what action, if any, you have taken to acquire such document.

5. Documents shall be produced as they are kept in the regular course of business or, in the alternative, shall be organized and labeled so as to correspond to the paragraph number of the document requests to which they relate.

C. DOCUMENTS REQUESTED

1. Any and all opinions rendered by anyone, including but not limited to any legal opinions, regarding the 30-day Certificate of Deposit promotion by Surety Bank, N.A. during 2003-2004.

D. SUPPLEMENTAL INFORMATION FOR INDIVIDUALS WHO HAVE BEEN DIRECTED TO SUPPLY INFORMATION PURSUANT TO A SUBPOENA

**Authority to Solicit the Information:**

The authority for requiring production of information is set forth in the subpoena you received. Disclosure of the information to the agency is mandatory, subject to the valid assertion of any legal right or privilege you may have.

**Principal Uses of the Information:**

The OCC's principal purpose in soliciting the information is to gather facts to determine whether any individual or bank is engaging, has engaged, or is about to engage in violations of law or regulation or unsafe and unsound banking practices. If the agency determines that an individual or a bank is engaging, has engaged, or is about to engage in such conduct, the information may be used in an enforcement proceeding against either or both of them.

**Routine Uses of the Information:**

The routine uses which may be made of the information supplied may include one or more of the following:

1. Provide the Department of Justice with periodic reports that indicate the number, amount, individual identity, and other details concerning outstanding potential criminal violations of the law which have been referred to the Department;
2. Provide the Federal Financial Regulatory Agencies and FinCEN with information relevant to their operations;
3. Disclose information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation;

4. Provide information or records to any appropriate governmental agency or self-regulatory organization charged with the responsibility of administering law or investigating or prosecuting violations of law or charged with enforcing or implementing a statute, rule, regulation, order, policy, or license;
5. Disclose, when considered appropriate, information to a bar association or other trade or professional organization performing similar functions, for possible disciplinary action;
6. Disclose certain records, in the event of litigation or enforcement action, to the appropriate court, magistrate, or administrative tribunal; or to counsel or witnesses for the presentation of evidence in the course of discovery, to the extent permitted by law.

**Effect of Not Supplying the Information:**

If you fail to comply with the subpoena, the agency may seek a court order requiring you to do so. If such an order is obtained and you thereafter fail to supply the information, you may be subject to civil or criminal sanctions, or both, for contempt of court.

In addition, if you willfully fail or refuse to attend and testify or to answer any lawful inquiry or to produce documents or other records in compliance with the subpoena, you may be found guilty of a misdemeanor and fined not more than \$1,000 or imprisoned for a term of not more than one year, or both.



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Comptroller of the Currency  
Administrator of National Banks

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Washington, DC 20219

October 13, 2005

Stephens B. Woodrough, Esq.  
100 Beach Drive N.E., Suite 1801-03  
St. Petersburg, Florida 33701-3965

Subject: Richard N. Abrams,  
Surety Bank, N.A., Ft. Worth, Texas

Dear Mr. Woodrough:

Please find enclosed a copy of a *subpoena* addressed to your client. This subpoena is issued under authority of an Order of Investigation into the affairs of Surety Bank, N.A., Ft. Worth, Texas by the Office of the Comptroller of the Currency ("OCC"). This subpoena is issued under authority of 12 U.S.C. § 1818(n) and 12 C.F.R. § 19.34 by the OCC.

This subpoena requires your client to produce exact copies of the documents specified in the Appendix to the subpoena *duces tecum* by October 31, 2005, to my attention. Your client must provide a certification that the copies are a complete response to the request in the subpoena. In addition, if you or your client intend to seek reimbursement for copying costs, you must contact me prior to making any copies in order to make arrangements for copying that are consistent with the OCC's procurement and reimbursement policies.

If you have any questions regarding this subpoena, please contact me at (202) 874-5139.

Sincerely,

A handwritten signature in black ink, appearing to read "Jose Rivas", is written over the typed name and title.

Jose Rivas  
Attorney

Enforcement and Compliance Division

Enclosures

**EXHIBIT B-3**

**SUBPOENA DUCES TECUM**

**UNITED STATES OF AMERICA**

**DEPARTMENT OF THE TREASURY  
OFFICE OF THE COMPTROLLER OF THE CURRENCY**

**In the Matter of Surety Bank, N.A., Ft. Worth, Texas**

To: Tim Raso  
8613 Mary's Creek Drive  
Benbrook, Texas 76116

The Office of the Comptroller of the Currency ("OCC") has issued a formal order authorizing this investigation pursuant to 12 U.S.C. §§ 481, 1818(n), and 1820(c).

**YOU MUST PRODUCE** everything specified in the Appendix to this subpoena *duces tecum* on or before October 31, 2005, to:

Jose Rivas, Attorney  
Enforcement & Compliance Division  
Office of the Comptroller of the Currency  
250 E St., S.W., Washington, DC 20219

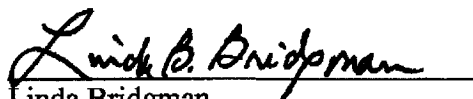
**YOU ARE SUMMONED TO TESTIFY** before Jose Rivas, Attorney or other OCC designated officials, at:

Office of the Comptroller of the Currency, Southern District Office  
500 North Akard Street, Suite 1600  
Dallas, Texas 75201

on the 9th day of November, 2005 at 10:00 a.m.

Willful failure to comply with this subpoena is a misdemeanor offense, punishable by a penalty of up to \$1,000 and imprisonment of up to one year.

In testimony whereof, the undersigned has hereunto set his hand, this 13th day of October, 2005.

  
Linda Bridgman  
Assistant Director  
Enforcement and Compliance Division



**APPENDIX A**  
**TO SUBPOENA DUCES TECUM TO**  
**Tim Raso**

**A. DEFINITIONS**

1. The terms “you” and “your” means Tim Raso, in the individual and/or corporate capacity, any wholly owned subsidiaries, affiliates, limited partnerships, joint ventures, and any employees, agents, accountants, attorneys, or other persons or entities acting under the control, the direction or on behalf of Tim Raso.
2. The terms “and” and “or” shall be construed conjunctively or disjunctively as necessary to make the request inclusive rather than exclusive.
3. The terms “relates” and “relating to” shall mean about, pertaining to, concerning, referring to, relating to, describing, reflecting, referencing, constituting and/or evidencing a stated subject matter.
4. The terms “document” and “documents” shall be used in their broadest sense and shall mean and include all written, printed, typed, recorded, or graphic matter of every kind and description, both originals and copies, and all attachments and appendices thereto. Without limiting the foregoing, the terms “document” and “documents” shall include all agreements, contracts, communications, correspondence, letters, telegrams, telexes, facsimiles, messages, memoranda, records, reports, books, summaries, or other records of telephone conversations of interviews, summaries, or other records of meetings and conferences, summaries or other records of negotiations, other summaries, diaries, diary entries, calendars, appointment books, time records, instructions, work assignments, visitor records, forecasts, statistical data, statistical statements, financial statements, work sheets, work papers, drafts, graphs, maps, charts, tables, accounts, analytical records, consultants’ reports, notices, marginal notations, notebooks, telephone bills or records, bills, statements, records, of obligation and expenditure, invoices, lists, journals, advertising, recommendations, files, printouts, compilations, tabulations, purchase orders, receipts, sell orders, confirmations, checks, canceled checks, letters of credit, envelopes or folders or similar containers, voucher analyses, studies, surveys, transcripts of hearings, transcripts of speeches, tape or disc recordings, sound recordings, video recordings, film, tapes, photographs, punch cards, programs, data compilations from which information can be obtained (including matter used in data processing), and other printed, written, handwritten, typewritten, recorded, stenographic, computer-generated, computer-stored, electronically stored matter, however and by whomever produced, prepared, reproduced, disseminated, or made.